

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is between the Office of the Indiana Attorney General (hereinafter the "State") and Affiliated Computer Services, Inc., whose address is Three Center Plaza, 7th Floor, Boston, Massachusetts, 02108 (hereinafter "Contractor").

W I T N E S S E T H

WHEREAS, the State desires to engage Contractor to render certain professional services involving the identification and collection of abandoned and unclaimed property; and

WHEREAS, Contractor is willing to provide such professional services upon the terms and conditions herein set forth;

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, it is agreed by and between the State and Contractor as follows:

1. Duties of Contractor

Contractor shall perform the duties as more fully set forth in Exhibit A ("Scope of Work – Auditing and Collection of Unclaimed Property"), Exhibit B ("Scope of Work – Custodial Securities, Conversion and Banking Services"), and Exhibit C – ("Report Content"), attached hereto and incorporated herein.

2. Consideration.

Consideration is based upon the amount of unclaimed property received by the State due to Contractor's efforts. Contractor shall receive twelve and one half percent (12.5%) of the gross amount reported to the State, as is more fully set forth in Exhibit D, attached hereto and incorporated herein. Total remuneration is contingent upon the amount of unclaimed property reported.

3. Term

The term of this Contract will be from January 1, 2003 through December 31, 2004

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for

three (3) years from the date of final payment under this Contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment

The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

7. Authority to Bind Contractor

Notwithstanding anything in this Contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Contract fully binding upon the Contractor when his/her signature is affixed, and this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a major change in scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its good faith and prudent judgment. The Contractor shall not commence any additional work or the change of the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws

The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, the provisions of which are incorporated by reference. The enactment or amendment of any applicable state or federal

statute or the promulgation or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of the Contract require formal modification.

10. Security and Privacy of Health Information. Deleted; not applicable.

11. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and in whatever form secured, developed, written or produced by the Contractor in furtherance of this Contract shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. The Contractor hereby specifically waives and /or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

12. Confidentiality of State Information

The Contractor understands and agrees that data, materials and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material and information gathered, based upon or disclosed to Contractor for the purposes of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

13. Conflict of Interest

- A. As used in this section:
- "Immediate Family" means the spouse and unemancipated children of an individual.
 - "Interested Party" means:
 1. The individual executing this Contract;
 2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
 - "Department" means the Indiana Department of Administration.
 - "Commission" means the State Ethics Commission.
- B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

- C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this contract, consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

14. Continuity of Services

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
 - 1. Furnish phase-in training, and
 - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
 - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
 - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase out services required.The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- C. The Contractor shall be allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e. costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

15. Debarment and Suspension

Contractor certifies, by entering into this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

16. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this contract and collect all monies due up to and including the date of termination.

17. Disputes

A. Should any disputes arise with respect to this Contract, Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written

request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

18. Drug-Free Workplace

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the

Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) Contractor's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction.
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

19. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release selected employee from any non-compete contracts that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume

performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation

When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Laws

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

23. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall not provide such indemnification to Contractor.

24. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for Contractor's employees.

25. Information Technology Accessibility Deleted; not applicable.

26. Key Person(s) Deleted; not applicable.

27. Licensing Standards

The parties agree that Contractor and its employees will comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to reimburse Contractor for any services performed when Contractor or its employees are not in compliance with such applicable standards, laws, or regulations. If licensure, certification or accreditation expires or is revoked, Contractor shall notify State immediately and the State, at its option, may immediately terminate the contract.

28. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

29. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notice to the State shall be sent to:

Office of the Attorney General
Attn: Tony Rogers
302 W. Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204

B. Notice and payments to the Contractor shall be sent to:

Affiliated Computer Services, Inc.
Three Center Plaza, 7th Floor
Boston, MA 02108

30. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, and (3) attachments prepared by the Contractor.

31. Ownership of Documents & Materials

All documents, records, programs, data, film, tape, articles, memos, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

32. Payments

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

33. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

34. Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

35. Renewal Option

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the original contract. Exercise of this option is at the sole discretion of the State and is not subject to agreement or acceptance by the Contractor.

36. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

37. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

38. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this Contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this Contract without the prior written consent of the State of Indiana.

39. Taxes

The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

40. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or

shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

41. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor **fails to:**
1. Correct or cure any breach of this Contract;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this contract.
- B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity under this contract.

42. Registration with the Secretary of State of Indiana

The Contractor certifies that if it is a non-domestic entity, it is registered with the Indiana Secretary of State to do business in the State of Indiana.

43. Travel

Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana and upon pre-approval by the State. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular (#97-1.1). Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

44. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

45. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

46. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the 2002 IDOA Professional Services Contract Manual) in any way except for the following clauses which are identified by name below: Clauses 10 [HIPPA], 25 [ITOC] and 26 [Key Persons] are inapplicable and have been deleted.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Affiliated Computer Services, Inc.

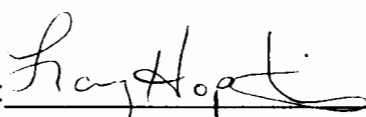
By: 

Printed Name: Robert F. Marten, Jr.

Title: Executive Vice President

Date: 2/3/03

Office of the Indiana Attorney General

By: 

Printed Name: Larry Hopkins

Title: C.E.O.

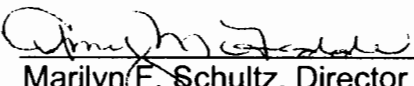
Date: 2-7-03

Approved by:
DEPARTMENT OF ADMINISTRATION

 (for)
David Perlini, Commissioner

Date: 2/12/03

Approved by:
STATE BUDGET AGENCY

 (for)
Marilyn F. Schultz, Director

Date: 2-17-03

APPROVED AS TO FORM AND LEGALITY

 (for)
Stephen Carter

Attorney General

Date: May 16, 2003

71884

Exhibit A
Scope of Work – Auditing and Collection of Unclaimed Properties

- A. Identification and Collection of Unclaimed Property:
1. ACS shall audit holders only upon prior authorization or notification of the state.
 2. ACS shall audit, identify, collect, and deliver unclaimed property from holders that are subject to report and deliver said property under the Indiana Unclaimed Property Act.
 3. ACS shall identify, audit, and collect unclaimed property from holders that are incorporated, have their principal place of business, and have records located outside the State of Indiana, unless otherwise agreed to in advance in writing by the State.
 4. ACS shall notify the State, if a holder company files for bankruptcy before or during an approved audit, within seven (7) days of discovery by ACS of the bankruptcy filing. In such a case, ACS will prepare a proof of claim or provide such information to enable the State to file a proof of claim within seven (7) days of discovery by ACS of the bankruptcy filing.
 5. The period in which ACS attempts to locate unclaimed property shall consist of the current reporting cycle as of the contract as well as any prior reporting cycles for which property remains unclaimed.
 6. ACS shall adhere to the Indiana Unclaimed Property Act regarding Statute of Limitations:
 - (a) If the Act provides an express date setting forth when the obligation of a holder to report commenced, it will be used.
 - (b) If the Act does not set forth such a date, the obligations of the holder will be deemed to require the reporting of all property in the possession of the holder on which the statute of limitations had not yet run as of the effective date of the adoption of the statute. However, in those instances where the State advises ACS that state law permits retroactive extension or abolition of the statute of limitations, the longest period otherwise permitted by law will be used (subject to the availability of the records of the holder).
 7. The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 85 S. Ct. 1136 (1965), *Pennsylvania v. New York*, 92 S. Ct. 2880 (1972), *Delaware v. New York*, 113 S. Ct. 1550 (1993), and any applicable federal legislation regarding which state has the right to escheat property shall be followed.
 - (a) Where the name and last known address of the apparent owner according to the books and records of the holder is in the State of Indiana, it shall be deemed to be reportable to the State of Indiana.
 - (b) If the holder has never maintained records setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the state of incorporation of the holder. An address shall be deemed to mean a description of location sufficient for the delivery and receipt of mail. Where no address exists, but the records of the holder establish that the apparent owner resided in Indiana, ACS shall advise the

state and the holder's state of incorporation, for the purpose of determining which state possesses the priority claim to the funds.

- (c) Where the address of the apparent owner cannot be readily ascertained, but in fact exists in the books and records of the holder, sampling techniques will be used to allocate the property among the states participating in the review. In such event, if required, sampling techniques will also be utilized to ascertain the proportion of the total reportable property for which the holder has names and last known addresses.
- 8. If the amount of reportable property cannot be ascertained from the books and records of the holder, statistical estimation techniques may be used for such periods.
- 9. All sampling and statistical estimation techniques used by ACS shall be in accordance with AICPA Professional Standards.
- 10. ACS shall not make a demand for the delivery of property upon holder until such time as the holder and ACS reconcile and agree upon the report to be filed with the state.

B. Delivery of Unclaimed Property:

- 1. ACS shall deliver or direct holders to transfer agents to deliver all cash, safe deposit contents, securities, and related owner information to the state.
- 2. ACS shall deliver or direct holders or transferors or transfer agents to deliver all other unclaimed property to the state.
- 3. ACS shall make delivery of property to the state within thirty (30) calendar days once property is identified and collected, or comes into the possession or control of ACS or its custodian bank. If circumstances beyond the control of ACS should arise to delay delivery of the property, ACS shall inform the state of such reasons in writing before the thirty (30) day period has lapsed.
- 4. Certificates for securities must be registered, if at all possible, in the name of the state. Those certificates that cannot be transferred must still be remitted to the State of Indiana in the nominee or original owner's name.
- 5. The original date that certificates are registered in the name of the state or credited in book entry form, must be retained, and must become a part of all reports relating to such certificates.

C. Report Forms:

- 1. Upon delivery of the property, ACS shall deliver a completed holder report, via electronic media, pursuant to state specifications, unless written permission has been granted, in advance, by the state in a non-electronic or other format.
- 2. Out-of-proof reports may be submitted, but only if pro-rated by ACS prior to submission to the state, and only if allocated for each individual owner in order to reflect the actual dollar/share amount submitted, and only if marked as an "out-of-proof report".
- 3. Delivery of the property to the state shall be accomplished at the sole expense of ACS.

4. ACS shall adhere to the requirements of the Indiana Unclaimed Property Act.
5. ACS shall provide the State on a monthly basis with a Work in Progress report, which sets forth all new record processing to be commenced and all record processing not yet completed, including reports in process, property requested, property in reconciliation, and property pending delivery.

D. Enforcement:

1. If a holder company refuses to subject itself to an audit by ACS, or is uncooperative in an ongoing audit by ACS, or refuses to remit funds or securities, then ACS will notify the state within seven (7) days of such occurrence. If circumstances beyond the control of ACS should arise to delay said notification, ACS shall inform the state of such reasons in writing before the seven (7) day period has lapsed.
2. ACS cannot initiate legal action against or enter into an agreement with a holder on behalf of the state without the prior written consent of the state.
3. ACS may inform a holder of Indiana law regarding penalties and/or interest.
4. ACS may not impose, or threaten to impose, penalties and/or interest.
5. If a holder of unclaimed property agrees to work with ACS in order to comply with Indiana's Unclaimed Property Act, then ACS shall enter into such an agreement with the holder under the following conditions: (1) Only if ACS informs the state of the proposed agreement with the holder; (2) Only if ACS obtains the prior written consent of the state to enter into said agreement; and (3) Only if ACS thereafter mails a copy of the executed agreement to the state.
6. ACS shall commence examination ninety (90) days from the date the holder is notified of ACS's intent to audit, identify, and collect unclaimed property. If circumstances beyond the control of ACS should arise to delay the examination, ACS shall inform the state of such reasons in writing before the ninety (90) day period has lapsed.
7. If the state does not want ACS to examine a holder, then the state shall give written notice to ACS within twenty (20) days of the date ACS requested authorization to audit a holder or the date of execution of the agreement between ACS and a holder as described in Section D, Part 5.
8. ACS shall complete identification, collection, and reporting of unclaimed property to the state within one (1) year of the starting date of the examination, except for a showing of good cause otherwise.
9. The state may compensate ACS for unclaimed property processed after the expiration date of the one (1) year examination period, but only if pursuant to a prior written agreement, and only if the work was commenced during the two (2) year performance period of this agreement.

E. Securities Valuation:

1. ACS shall determine the value of securities, at the closing bid price of any security traded on an exchange, on the date the security is registered in the states name; or if in the over-the-counter market, then at the bid price as set forth in the pink sheets on the date the security is registered in the states name.

2. ACS shall, contemporaneously with the delivery of property as set forth in Section B, Part 3 of this agreement, submit to the state official and verifiable documentation supporting the valuation of the securities on the date the securities are registered in the state name.
3. All securities shall be valued in accordance with generally accepted valuation procedures subject to verification by the state.

F. Examination Procedures:

1. All findings in connection with the examination of holders and the demands for payment of the unclaimed property shall be made pursuant to the laws of Indiana.
2. The examination of the books and records of unclaimed property and the demand for delivery of reportable property shall be made pursuant to the law of Indiana and shall adhere to generally accepted auditing standards.

G. Disclosure of Findings:

1. ACS may disclose information it acquires hereunder to other states pursuant to a plan whereby Indiana similarly benefits from such reciprocal disclosures except as prohibited by the Indiana Unclaimed Property Act.
2. Except as expressly permitted by this agreement, ACS shall not disclose any information it may obtain hereunder and all such information shall be confidential.

H. Due Diligence: ACS shall advise the Holder of IC 34-1-26(e) regarding notification to owner of their unclaimed property. Upon conclusion of the services provided by this agreement, ACS shall advise the Holder of its' continuing obligation to report unclaimed property directly to the State.

I. Third party Expenses: It is acknowledged that ACS on its behalf may enter into agreements with persons, firms and entities to assist in the performance of this Agreement. The payment for such services shall be the sole responsibility of ACS and nothing contained herein shall obligate or otherwise make the State responsible for the payment of any such expense.

Exhibit B

Scope of Work – Custodial Securities, Conversion and Banking Services

I. APPOINTMENT OF CUSTODIAN: ACS will contract with a participating member of the Depository Trust Company who shall act as custodian for the safekeeping of securities and cash received on behalf of the State from Holders of abandoned property and agrees that ACS shall retain all physical securities and cash received on behalf of the State at said custodian.

II. CUSTODIAL DUTIES: ACS shall:

1. Receive delivery of certificates required in the name of the State or its nominee for safekeeping at the Custodian's premises, or in a registered clearing agency or other book-entry system for the central handling of securities.
2. Maintain in hard copy form for a period of not less than one year records of all receipts, deliveries and locations of securities, together with a current inventory thereof.
3. Determine the value of securities at the closing price of any security traded on an exchange on the date the security is received by the Custodian or if traded in the over-the-counter market at the bid price as set forth in the pink sheets on the date the security is received. Other securities shall be valued in accordance with generally accepted valuation procedures.
4. Promptly remit to the State, or to any other party the State may designate in writing, cash or securities held for the State within ten (10) business days from receipt of such cash or securities; provided, that (i) cash or securities have been received by the Custodian in accordance with ACS request; (ii) ACS has received a delivery release authorization from the State; and (iii) the State has elected to receive deliveries on a daily basis.
5. Provide delivery reports to the State containing such information as set forth in Exhibit 2, attached hereto.

III. BANK ACCOUNT: ACS shall:

1. Pending delivery to the State, retain cash of the State in a duly chartered federally insured bank in a separate account or accounts in the name of ACS for the account of the State, subject only to draft or order by ACS acting pursuant to the terms of this Agreement.
2. Collect, receive and deposit in ACS account maintained pursuant to Section 11.1(a) all cash with respect to the securities held hereunder.
3. ACS reserves the right to reverse erroneous entries to the State's account.

IV. CREDITING OF INTEREST:

1. On February 15 and August 15 of each year, ACS shall provide to the State a statement of interest credit earned on the State's funds during the preceding six month period ending with the preceding December 31 and June 30, respectively.
2. The State shall receive an interest credit equal to ACS actual investment earnings on funds attributable to the State and held by ACS pending delivery. Where the actual amounts of funds attributable to the State cannot be readily ascertained, the State shall be credited with a prorata share of the investment earnings on such unattributed funds, based on the State's prorata share of the total value of all property deliveries made by ACS to all states during the preceding six (6) month period.
3. The State's interest credit shall be adjusted for reconciliation expenses incurred by ACS as set forth in Section 13.
4. The adjusted interest credit will be used to offset fees on the next ensuing property delivery made by ACS. Such offset against fees shall continue until the net interest credit is exhausted.

V. RECONCILIATION EXPENSE

1. On February 15 and August 15 of each year, ACS shall provide to the State a statement of reconciliation expenses incurred with respect to the State's unclaimed property during the preceding six month period ending with the preceding December 31 and June 30, respectively.
2. The statement of reconciliation expenses incurred shall include an accounting of the costs incurred by ACS in balancing unclaimed property receipts to reports of unclaimed property, in connection with the failure of Holders and/or their agents to correctly remit property or provide the appropriate delivery documentation. The statement of reconciliation shall also include the calculation of the State's prorated portion of the expenses, based on the State's prorata share of the total value of all unclaimed property deliveries made by ACS to all states during the preceding six (6) month period.
3. The State's prorata share of the reconciliation expenses incurred by ACS shall be offset against the State's interest credit for the corresponding six (6) month period, as set forth in Section 12. In the event that the offset for reconciliation expenses exceeds the amount of interest credit earned by the State during the preceding six (6) month period, the balance of the reconciliation expense shall be carried over to the ensuing six (6) month period.

VI. INSTRUCTIONS

1. ACS shall be deemed to have received proper instructions upon receipt of written instructions signed by one or more persons as the State shall from time to time have authorized to give the particular instructions in question.

Different persons may be authorized to give instructions for different purposes.

2. A certified copy of a resolution or action of the State may be received and accepted by ACS as conclusive evidence of the authority of any such person or persons to act and may be considered as in full force and effect until receipt of written notice to the contrary.
3. Instructions may be general or specific in terms, and unless specified to the contrary, ACS is authorized to act upon such instructions whether given in writing or via facsimile.

VII. LIABILITY/SECURITY

1. ACS agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act or negligent omission, or by any willful misconduct, on the part of ACS.
2. ACS shall have no more or less responsibility or liability to the State on account of any action or omission of any Subcustodian employed by ACS than a Subcustodian would have to ACS, except (i) to the extent attributable to a failure by ACS in exercising due care in the selection or retention of a Subcustodian, or (ii) to the extent that such act or omission of the Subcustodian was caused by ACS own negligence or bad faith. The State shall have the right to approve any agreement entered into between ACS and the Subcustodians.
3. In performing the services ACS shall rely upon the accuracy, timeliness, and authenticity of any and all records, information and input media provided to ACS. Reports and services shall be deemed to have been accepted by the State as correct, unless ACS is notified in writing by the State of any errors, omissions, or irregularities within thirty (30) days of the receipt of such reports and services.
4. ACS may not pledge, assign, hypothecate or otherwise encumber securities or cash of the State without prior written consent of the State.

XVI. MISCELLANEOUS

1 It is acknowledged and agreed that ACS on its behalf may enter into agreements with persons, firms and entities to assist in the performance of this Agreement. The payment for all such services shall be the sole responsibility of ACS and nothing contained herein shall obligate or otherwise make the State responsible for the payment of any such expense.

2 Any and all notices, requests, demands, or other communications required or permitted to be given hereunder shall be deemed to have been duly given when personally delivered or mail by first class, certified or registered mail, return receipt requested, addressed to the parties at the addresses set forth below:

- (a) If to ACS, to: ACS Unclaimed Property Clearinghouse
Three Center Plaza, 7th Floor
Boston, Massachusetts 02108
Attn: Lynden Lyman, President
- (b) If to the State, to: Judy Hudson
Unclaimed Property Section
Office of the Attorney General
Indiana Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204

3 All computer programs, software specifications, formats, manuals and like materials written and used in connection with this Agreement are made available "as is" without warranty.

4. Any waiver of any rights hereunder, of any failure to perform hereunder, or of any breach hereof shall not constitute or be deemed a waiver of any other right to failure to perform hereunder or breach hereof, whether of a similar or dissimilar nature.

5 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and no waiver, alteration or modification of any of the provisions hereof or rights to act hereunder shall be binding unless in writing.

6 Except as expressly allowed by this Agreement, ACS agrees to not disclose any information it may obtain in furtherance of this Agreement.

7 All data and related information obtained by ACS, pursuant to this Agreement, from Holders of unclaimed property will be deemed to be the property of the State. Upon termination of this Agreement, ACS shall deliver to the State all papers, files, and information acquired hereunder which can be readily transferred to the State. Full immediate and unrestricted access to the work product of ACS during the term of this Agreement shall be available to the State.

8 ACS will submit progress reports to the State upon request. The report will be oral, unless the State upon receipt of the oral report should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with the schedule and the completion can be reasonably assured on the schedule date.

Exhibit C

Report Content

All reports provided under this Agreement shall, to the extent available, incorporate or otherwise will be accompanied by the following information:

- a. Name and address of Holder
- b. Federal employer identification number of Holder
- c. Name and address of owner
- d. Social Security Number of Federal Tax identification number of owner
- e. Holder account number
- f. Class of security
- g. CUSIP number
- h. Description of property
- i. Date of last account activity
- j. Interest/dividends due
- k. Market value at receipt by ACS, as applicable
- l. Total cash received
- m. A calculation of fees

Exhibit D
Compensation

A. Compensation:

1. The fee for ACS is twelve and one half percent (12.5%) of the gross amount reported to the state. The fee will be determined by the state after receipt of the unclaimed funds and/or securities, and the Unclaimed Property Report.
2. ACS will remit the gross proceeds and invoice to the state for its fee.
3. ACS shall escrow no fee, nor shall any fee earned from one issue be offset against any uncollected fee from another issue.
4. Fees due to ACS shall be based on the sales price per share as set forth in Section E of Exhibit A.
5. ACS shall not be entitled to any fees resulting from a particular examination if the state finds that the examination was not performed in a commercially reasonable manner and in good faith.